

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-CR-146

MARK ANTHONY CUBIE,

Defendant.

DECISION AND ORDER DENYING MOTION TO RECONSIDER (DOC. 723),
DENYING AS MOOT MOTION FOR EXPEDITED RULING ON MOTION FOR
RECONSIDERATION (DOC. 730), AND GRANTING MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS ON APPEAL (DOC. 731)

This case comes before the court on Mark Cubie's motion to reconsider, motion to expedite reconsideration, and motion for leave to proceed in forma pauperis on appeal. Although nothing in this record requires reconsideration, the court will grant Cubie leave to proceed in forma pauperis on appeal.

Cubie entered a guilty plea in 2007, and was sentenced to 235 months imprisonment on August 22, 2008. The Seventh Circuit Court of Appeals affirmed his judgment of conviction. *U.S. v. Nickson*, 628 F.3d 368 (7th Cir. 2010). While the appeal was pending, Cubie filed numerous motions seeking the return of seized property, grand jury information, discovery, court papers, partial summary judgment, criminal justice act funds, and transcripts. The court conducted two hearings, granted the motion for discovery, as to which the government provided a disc, and denied all remaining motions during the hearing on September 5, 2012. Cubie filed a motion to reconsider and a motion to vacate under 28 U.S.C. § 2255 prior to filing his notice of appeal.

With respect to his motion to reconsider, Cubie challenges the court's decision denying his request for partial judgment on the return of a Cadillac vehicle and a sum of money that was the subject of forfeiture. Cubie asserts – without proof – that the federal government lost or “shopped around” his vehicle to another agency. In addition, he asserts the money was part of an “ex parte seizure without any sort of notice.”

During the September 5, 2012, hearing, the court found that the car was the subject of a state forfeiture in Milwaukee County Circuit Court Case No. 2005CV5038. The government established that the state possessed and forfeited the car through an action commenced on June 15, 2005. Cubie was divested of all rights, title, and interest in the vehicle on September 19, 2005, by the Milwaukee County Circuit Court. Although Cubie believed he owned a 1994 rather than a 1996 Cadillac, the government established that the vehicle was identified by its VIN number. Having no proof that the federal government was ever in possession of any other Cadillac vehicle owned by Cubie, the court could not order the return of a car that the government never possessed or forfeited. Moreover, the record reveals that \$10,721 was identified in four indictments as well as the bill of particulars. (Docs. 37, 81, 89, 259, 419.) At page 30 of the plea agreement, Cubie acknowledged that the properties listed in the indictment and any bill of particulars constituted the proceeds of the offense to which he agreed to plead guilty. Further, he agreed to the forfeiture of those properties. (Doc. 469 at 10.) Hence, Cubie has established no bases for reconsideration.

According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization “unless the district court shall certify that the appeal

is not taken in good faith or shall find that the party is otherwise not entitled so to proceed.” Cubie had court-appointed counsel during the criminal proceedings and the court will not certify that his appeal is not taken in good faith. Therefore, the court will grant him leave to proceed on appeal in forma pauperis. Now, therefore,

IT IS ORDERED that Cubie’s motion to reconsider is denied.

IT IS FURTHER ORDERED that Cubie’s motion for expedited ruling on motion for reconsideration is denied as moot.

IT IS FURTHER ORDERED that Cubie’s motion for leave to proceed in forma pauperis is granted.

Dated at Milwaukee, Wisconsin, this 16th day of April, 2013.

BY THE COURT

/s/ C.N. Clevert, Jr.
C.N. CLEVERT, JR.
U.S. DISTRICT JUDGE